

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

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In the Matter of:

Consumer & Governmental Affairs Bureau  
and Wireless Telecommunications Bureau  
Seek Comment on Advanced  
Communication Provisions of the Twenty-  
First Century Communications and Video  
Accessibility Act of 2010

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) CG Docket No. 10-213  
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**COMMENTS OF MOTOROLA INC.**

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## **EXECUTIVE SUMMARY**

Motorola strongly supports Congress's goal, as embodied in the Accessibility Act, of ensuring that individuals with disabilities have full access to and use of emerging Internet Protocol-based advanced communications services. Motorola's commitment to accessibility is expressed through its attention to these issues at every step of the design process and its market leadership in bringing the broadest range of accessible devices to individuals with disabilities. Motorola looks forward to continuing this tradition of innovation and leadership.

In implementing the important new mandates set by the Accessibility Act, the Commission should strike an appropriate balance between maximizing access to emerging technologies for individuals with disabilities and ensuring that the public benefits of developments in advanced communications remain available and affordable for all. The Accessibility Act demonstrates an inherent sensitivity to technical and marketplace considerations, as evidenced by its numerous provisions intended to ensure that compliance is not unduly burdensome on manufacturers and service providers. This sensitivity, combined with the Accessibility Act's clear focus on consumers, should inform the Commission's interpretations of the new Section 716 and 717 requirements.

With respect to the new Section 716 of the Communications Act, manufacturers' and service providers' obligations to ensure that devices and services used for advanced communications services are accessible and usable by individuals with disabilities should be limited to first party consumer device and service offerings. Moreover, the Commission's determinations of whether accessibility for a particular technology is "achievable" and whether the cost of a third party solution is "nominal" should take into account the differences between various devices, the wide variety of accessibility solutions available to consumers, and the

complexity of third-party peripherals, equipment, and applications that are required to provide accessibility to individual with disabilities. Finally, the Commission should apply the new Section 716 requirements in a way that is complementary to, and not duplicative of, the existing Section 255 requirements, with which manufacturers have a history of successful compliance.

The Commission should be aware and take advantage of existing processes and trade practices, and it should integrate these practices into any new regulations. For example, in evaluating manufacturer and service provider compliance with the recordkeeping obligations of Section 717, the Commission should consider the extent to which the requirements of the new section are already satisfied by existing reporting and disclosure activities. To the extent the Commission believes additional information is necessary, it should modify existing reporting requirements rather than establishing separate but repetitive obligations that would be a less efficient use of public and private resources.

The Accessibility Act contains important provisions to ensure that consumers with disabilities are able to use and access emerging IP-enabled communications technologies coupled with protections to ensure that compliance will not be overly burdensome or create duplicative obligations for manufacturers and service providers. The comments below are intended to aid the Commission in replicating this policy focus in its implementation of the Accessibility Act.

## TABLE OF CONTENTS

	Page
EXECUTIVE SUMMARY .....	i
I. INTRODUCTION .....	1
II. SECTION 716 OF THE ACT MUST BE INTERPRETED IN LIGHT OF THE TECHNICAL, ECONOMIC, AND REGULATORY REALITIES OF THE CONSUMER ADVANCED COMMUNICATIONS MARKET .....	3
A. Section 716 Obligations Should Apply To Consumer Devices and Services Placed Into the Market By Manufacturers and Service Providers .....	4
1. Public Safety and Enterprise Devices, Networks, and Services Should Not Be Subject to Section 716 Requirements .....	4
2. Manufacturers and Service Providers Should Not Be Held Responsible For Ensuring the Accessibility of Third-Party Applications and Services .....	6
B. The “Achievability” Standard Should Be Sensitive To the Variation in Operational and Functional Aspects of Devices. ....	7
C. The Industry Flexibility Provisions Should Embrace A Range of Accessibility Solutions.....	8
D. Section 716 Should Complement, Not Duplicate Section 255 Requirements .....	9
III. SECTION 717’S RECORDKEEPING OBLIGATIONS SHOULD BE CONSTRUED IN LIGHT OF EXISTING REPORTING ACTIVITIES .....	9
IV. CONCLUSION.....	11

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**COMMENTS OF MOTOROLA INC.**

Motorola Inc. (“Motorola”) hereby submits the following comments in response to the Federal Communications Commission’s (“Commission”) public notice seeking input on the interpretation and implementation of portions of the Twenty-First Century Communications and Video Accessibility Act of 2010 (“Accessibility Act”)<sup>1</sup> related to providing persons with disabilities access to advanced communications services and mobile telephone Internet browsers.<sup>2</sup>

**I. INTRODUCTION**

Motorola strongly supports Congress’s goal to ensure that individuals with disabilities have access to emerging Internet Protocol (“IP”)-based communication and video programming technologies, as expressed through the Accessibility Act. Motorola has long recognized the

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<sup>1</sup> Twenty-First Century Communications and Video Accessibility Act of 2010, Pub. L. No. 111-260, 124 Stat. 2751 (2010).

<sup>2</sup> See Consumer & Governmental Affairs Bureau and Wireless Telecommunications Bureau Seek Comment on Advanced Communication Provisions of the Twenty-First Century Communications and Video Accessibility Act of 2010, CG Docket No. 12-213, *Public Notice*, DA 10-2029 (rel. Oct. 21, 2010).

importance of making accessibility a priority in all of its product lines. For example, as explained recently in its comments submitted in response to the Commission's *Further Notice of Proposed Rulemaking* on Hearing Aid Compatibility ("HAC") in wireless devices, Motorola incorporates hearing aid compatibility throughout its equipment design process.<sup>3</sup> This focus on making cutting-edge technology available to all consumers makes Motorola a market leader in advanced communications devices that are accessible to individuals with disabilities. Motorola takes pride in these achievements not only because they translate into success in the marketplace, but also because they are the right thing to do.

In executing the mandates of the Accessibility Act, it is important that the Commission strike an appropriate balance between maximizing access to emerging technologies for individuals with disabilities and ensuring that the public benefits of developments in advanced communications remain available and affordable for all. To this end, Motorola offers below several suggestions for interpretations of the Accessibility Act's new Section 716 requirements that will help realize the goals of the Accessibility Act while taking technical and marketplace realities fully into account. Further, when adopting guidelines for the recordkeeping obligations of the new Section 717, the Commission should consider the extent to which these requirements are satisfied by or can be integrated with existing reporting and disclosure activities, such as those mandated by the Commission's HAC rules.<sup>4</sup>

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<sup>3</sup> See Comments of Motorola Inc., WT Docket No. 07-250 at 7-8 (filed Oct. 25, 2010) ("Motorola HAC FNPRM Comments").

<sup>4</sup> See 47 C.F.R. § 20.19(i).

## **II. SECTION 716 OF THE ACT MUST BE INTERPRETED IN LIGHT OF THE TECHNICAL, ECONOMIC, AND REGULATORY REALITIES OF THE CONSUMER ADVANCED COMMUNICATIONS MARKET.**

The Commission must be mindful of technical and marketplace constraints and existing regulatory demands in implementing the new Section 716 requirements of the Accessibility Act. The Accessibility Act demonstrates an inherent sensitivity to technical and marketplace considerations, as evidenced by its numerous provisions intended to ensure that compliance is not unduly burdensome on manufacturers and service providers. For example, the Section 716 obligations are qualified by the requirement that they be achievable.<sup>5</sup> Also, the Accessibility Act authorizes the Commission to grant waivers and to exempt small entities from the new regulations.<sup>6</sup> This focus on technical and economic feasibility is also reflected in the Accessibility Act's embrace of third-party peripherals and other solutions, and its limiting rule of construction that the Act does not require that every feature and function of every device and service be accessible for every disability.<sup>7</sup> This same sensitivity should inform the Commission's interpretations of the terms "advanced communications services," "achievable," and "nominal cost," as used in the Accessibility Act. Moreover, the Commission should avoid any duplicative or conflicting regulatory obligations by interpreting Section 716 as being complementary to Section 255 and only applying to devices not previously covered by that other statutory provision.

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<sup>5</sup> See, e.g., new Section 716 of the Communications Act, codified at 47 U.S.C. § 617(a)(1).

<sup>6</sup> *Id.* at § 617(h).

<sup>7</sup> *Id.* at § 617(i).

**A. Section 716 Obligations Should Apply To Consumer Devices and Services Placed Into the Market By Manufacturers and Service Providers.**

Manufacturers' and service providers' obligations to ensure that devices and services used for advanced communications services are accessible and usable by individuals with disabilities should be limited to consumer device and service offerings. In particular, the Commission should take care to ensure that any new accessibility obligations do not apply to public safety or enterprise networks and devices. Likewise, manufacturers and service providers should not be held accountable for the accessibility of third party applications or services that are not provided or endorsed by the manufacturer or service provider. The fundamental purpose of the Accessibility Act is to ensure that *consumers* have access to emerging IP-based networks and devices. This consumer focus is evident throughout the Accessibility Act.<sup>8</sup> Congress chose to pursue the consumer-oriented objectives of the new Section 716 by placing mandates on providers of advanced communications services and manufacturers of advanced communications devices. The Commission should hew closely to this vision in adopting regulations implementing the Accessibility Act.

**1. Public Safety and Enterprise Devices, Networks, and Services Should Not Be Subject to Section 716 Requirements.**

Public safety and enterprise devices, networks, and services should be excluded from the definition of "advanced communications services" regardless of whether the devices, networks, and services at issue are connected to the public Internet, use IP technologies to deliver data or voice services, or are interconnected with the public switched telephone network ("PSTN"). As

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<sup>8</sup> See, e.g. new Section 716 of the Communications Act, to be codified at 47 U.S.C. §§ 617(a)(2)(B), (b)(2)(B) (providing that third party applications, peripheral devices, software, hardware, or customer premises equipment used to provide accessibility must be available to consumers at nominal cost); newly amended Section 713 of the Communications Act, to be codified at 47 U.S.C. § 613(f)(4)(C)(iii) (requiring a future report on the types of described video programming available to consumers and the consumer use and benefits of such programming).



the Commission recently recognized in the Hearing Aid Compatibility context, public safety and other private communications networks have different technical, operational, and economic imperatives than consumer services. As such, “the burdens on [public safety and private communications network equipment] manufacturers and system operators of satisfying hearing aid compatibility requirements would outweigh the public benefits.”<sup>9</sup> Similar reasoning applies in the current context.

The Commission should protect the development of next generation public safety mobile broadband systems by clarifying that it interprets Section 716’s definition of advanced communications services as not extending to public safety communications networks and devices. Public safety communications technologies continue to evolve and public safety mobile broadband systems are being deployed with the ability to connect to the public Internet and to make calls over the PSTN. However these technologies are still nascent, and the markets for these devices and networks are still developing. Public safety agencies operate on slim budgets and have demanding needs in terms of the functionality and hardening of their devices and networks. Adding additional accessibility requirements at this late date could necessitate substantial and costly reengineering of public safety networks, ultimately raising the costs of and delaying the timelines for deployment of these crucial communications technologies. This result is unnecessary and should be avoided, especially in light of the focus on consumer markets contained in the Accessibility Act.

Enterprise communications networks should also be exempt from the new Section 716 requirements, notwithstanding an ancillary connection to the Internet or PSTN. Many private

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<sup>9</sup> See Amendment of the Commission’s Rules Governing Hearing Aid-Compatible Mobile Handsets, WT Docket No. 07-250, *Policy Statement and Second Report and Order and Further Notice of Proposed Rulemaking*, 25 FCC Rcd 11167, 11196 ¶ 82 (2010).

land mobile radio systems use an IP-based backbone to transmit mission-critical voice communications, however these technologies should not be considered non-interconnected VoIP services for purposes of Section 716. Voice communications are increasingly moving to IP-based systems because of the additional functionality and data capabilities that are available. But these systems are designed for specialized markets and uses and are not intended for typical consumer communications. Adding new regulatory obligations to these devices could inadvertently chill innovation in this area without a concomitant benefit for consumers with disabilities. Consistent with the purposes behind the exception for “customized equipment or services that are not offered directly to the public,”<sup>10</sup> public safety and enterprise communications services and devices that are not manufactured for or targeted to the broader consumer market should not be subject to the new Section 716 requirements.

**2. Manufacturers and Service Providers Should Not Be Held Responsible For Ensuring the Accessibility of Third-Party Applications and Services.**

The Commission should clarify that the Section 716 obligations do not apply to third party applications and services accessed by consumers outside of the control of manufacturers and service providers. Consumers increasingly use third party applications and services to customize their devices and enable new functionalities. As Motorola has explained, adding non-native VoIP applications to a device is equivalent to reengineering the device.<sup>11</sup> Because the original manufacturer and service provider have no means by which to predict, test, or control the impact such a reengineering might have on the operations of the device, they should not be

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<sup>10</sup> See new Section 716(i) of the Communications Act, to be codified at 47 U.S.C. § 617(i).

<sup>11</sup> Motorola HAC FNPRM Comments at 9-10.

held responsible for ensuring that these functionalities are accessible to and usable by individuals with disabilities.

Clarifying that that manufacturers and service providers are only responsible for ensuring the Section 716 compliance of features and functionalities that are included in advanced communications services devices off-the-shelf would be consistent with other actions by Congress and the Commission. For example, such a clarification would match the policy determination of Section 718 of the Accessibility Act, which requires only that mobile telephone manufacturers and service providers ensure accessibility for blind and vision-impaired individuals to the Internet browsers that are included with their telephones.<sup>12</sup> Similarly, when the Commission adopted open platform rules in the Upper 700 MHz C-Block, it specified that the C-Block licensee would be protected from regulatory responsibilities for third party devices brought over to its network.<sup>13</sup> Consistent with these existing policies and the Commission's desire to promote open platforms, the Commission should construe the Accessibility Act to impose no obligation on manufacturers with respect to third party applications put onto devices by users or others.

**B. The “Achievability” Standard Should Be Sensitive To the Variation in Operational and Functional Aspects of Devices.**

In determining whether a particular accessibility standard is “achievable,” the Commission is instructed to consider the varying degrees of functionality and features and different price points of devices and services offered by the manufacturer or provider.<sup>14</sup> The Commission should recognize that different tiers of devices vary in functionality as well as in

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<sup>12</sup> See new Section 718 of the Communications Act, to be codified at 47 U.S.C. § 619.

<sup>13</sup> Service Rules for the 698-746, 747-762 and 777-792 MHz Bands, WT Docket No. 06-150, *Second Report and Order*, 22 FCC Rcd 15289, 15379 ¶ 226 (2007).

<sup>14</sup> See new Section 716(g) of the Communications Act, to be codified at 47 U.S.C. § 617(g).

price, and this will provide differing opportunities for accessibility. Higher-tier devices offer more features and functionality, and more options for connectivity to communications and information. With this increased number of functions comes increased options for accessibility and use by individuals with disabilities. Although devices at every level should include the potential to be used by and accessible to individuals with disabilities, the Commission’s analysis should be flexible enough to accommodate the variance in technology and function that make it possible to offer devices and services to all consumers.

**C. The Industry Flexibility Provisions Should Embrace A Range of Accessibility Solutions.**

The provisions of Section 716 providing for “Industry Flexibility”<sup>15</sup> should be interpreted in such a way as to take into account the variety of accessibility solutions available to consumers. In determining what should constitute a “nominal cost,” the Commission should consider the complexity of third-party peripherals, equipment, and applications that are required to provide accessibility to individual with disabilities. Cost will be affected not only by the type of disability being addressed, but also by the nature of the underlying service and the chosen solution. Certain features and functions will be more complex and costly to make accessible than others. Similarly, some disabilities will demand more or less modification to devices and services to achieve accessibility. This dynamic will necessitate a flexible and case-specific analysis. A one-size-fits-all definition of nominal cost is inappropriate in light of the wide breadth of disabilities and accessibility solutions.

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<sup>15</sup> See, e.g., new Section 716(a)(2) of the Communications Act, codified at 47 U.S.C. § 617(a)(2).

**D. Section 716 Should Complement, Not Duplicate Section 255 Requirements.**

The requirements and responsibilities of manufacturers and service providers created by Section 716 are separate from and complementary to the Section 255 requirements, and any devices already covered by Section 255 should not be subject to the new Section 716 accessibility obligations. Section 716(f) states that the new requirements “shall not apply to any equipment or services, including interconnected VoIP service, that are subject to the requirements of section 255.”<sup>16</sup> This is appropriate because manufacturers and service providers already provide a high degree of accessibility to devices and services under Section 255. As explained by Motorola in the HAC context,<sup>17</sup> manufacturers have already integrated existing accessibility requirements throughout their development processes. For any devices that are already subject to existing Section 255 requirements, these processes should not be disrupted in favor of duplicative Section 716 obligations. However, for emerging types of advanced communications devices and services for which there is no established framework of compliance with Section 255, the new Section 716 requirements should apply. This clear approach will ensure accessibility for individuals with disabilities to emerging technologies while also preserving the years of effort and development that have gone in to complying with the requirements of Section 255.

**III. SECTION 717’S RECORDKEEPING OBLIGATIONS SHOULD BE CONSTRUED IN LIGHT OF EXISTING REPORTING ACTIVITIES.**

In evaluating manufacturer and service provider compliance with the recordkeeping obligations of Section 717,<sup>18</sup> the Commission should consider the extent to which the

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<sup>16</sup> See new Section 716(f) of the Communications Act, to be codified at 47 U.S.C. § 617(f).

<sup>17</sup> See Motorola HAC FNPRM Comments at 7-8.

<sup>18</sup> See new Section 717 of the Communications Act, to be codified at 47 U.S.C. § 618.

requirements of the new section are already satisfied by existing reporting and disclosure activities. For example, Motorola suggests that the requirement that manufacturers and service providers maintain information about efforts to consult with individuals with disabilities is already being fulfilled by Section 20.19 of the Commission's rules, which requires manufacturers and service providers to include details of their outreach efforts in their annual HAC reports.<sup>19</sup> Moreover, Motorola, and most other manufacturers and service providers already publicly disclose information about accessibility features and compatibility with third party peripherals for their devices and services on their corporate websites.<sup>20</sup> These public disclosures seem to satisfy the second two recordkeeping requirements of Section 716(a)(5). To the extent that the Commission believes these efforts are insufficient, it should seek new information within the framework of existing reports. A consolidated report will be less burdensome on manufacturers and service providers, will reduce confusion, and will ultimately lead to more robust and accurate reporting.

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<sup>19</sup> See 47 C.F.R. §§ 20.19(i)(2)(ix), 20.19(i)(3)(ix).

<sup>20</sup> See, e.g., Motorola, *Accessibility Around The World*, [http://www.motorola.com/Consumers/US-EN/About\\_Motorola/Corporate\\_Responsibility/Accessibility](http://www.motorola.com/Consumers/US-EN/About_Motorola/Corporate_Responsibility/Accessibility) (last visited Nov. 18, 2010).

#### IV. CONCLUSION

The Accessibility Act contains important provisions to ensure that consumers with disabilities are able to use and access emerging IP-enabled communications technologies coupled with protections to ensure that compliance will not be overly burdensome or create duplicative obligations for manufacturers and service providers. As discussed above, the Commission should strike this same balance in implementing the Accessibility Act.

Respectfully submitted,

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